

## § 530.8

## 46 CFR Ch. IV (10–1–07 Edition)

bargaining agreement or element thereof, including any element that constitutes an essential term of a service contract under section 8(c) of the Act.

### Subpart B—Filing Requirements

#### § 530.8 Service Contracts.

(a) Authorized persons shall file with BTCL, in the manner set forth in appendix A of this part, a true and complete copy of every service contract or amendment to a filed service contract before any cargo moves pursuant to that service contract or amendment.

(b) Every service contract filed with the Commission shall include the complete terms of the service contract including, but not limited to, the following:

(1) The origin port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

(2) The destination port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

(3) The commodity or commodities involved;

(4) The minimum volume or portion;

(5) The service commitments;

(6) The line-haul rate;

(7) Liquidated damages for non-performance (if any);

(8) Duration, including the

(i) Effective date; and

(ii) Expiration date;

(9) The legal names and business addresses of the contract parties; the legal names of affiliates entitled to access the contract; the names, titles and addresses of the representatives signing the contract for the parties; and the date upon which the service contract was signed, except that in the case of a contract entered under the authority of an agreement or by a shippers' association, individual members need not be named unless the contract includes or excludes specific members. Subsequent references in the contract to the contract parties shall be consistent with the first reference (e.g., (exact name), "carrier," "shipper," or "association," etc.). Carrier parties which enter into contracts that include affiliates must either:

(i) List the affiliates' business addresses; or

(ii) Certify that this information will be provided to the Commission upon request within ten (10) business days of such request. However, the requirements of this section do not apply to amendments to contracts that have been filed in accordance with the requirements of this section unless the amendment adds new parties or affiliates;

(10) A certification of shipper status;

(11) A description of the shipment records which will be maintained to support the service contract and the address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under § 530.15 of this part; and

(12) All other provisions of the contract.

(c) *Certainty of terms.* The terms described in paragraph (b) of this section may not:

(1) Be uncertain, vague or ambiguous; or

(2) Make reference to terms not explicitly contained in the service contract itself unless those terms are contained in a publication widely available to the public and well known within the industry.

(d) *Other requirements.* Every service contract filed with BTCL shall include, as set forth in appendix A to this part by:

(1) A unique service contract number of more than one (1) but less than ten (10) alphanumeric characters in length ("SC Number"); and

(2) A consecutively numbered amendment number no more than three digits in length, with initial service contracts using "0" ("Amendment number");

(3) The filed FMC Agreement Number(s) assigned by the Commission under 46 CFR part 535 (if applicable); and

(4) An indication of the method by which the statement of essential terms will be published.

(e) *Exception in case of malfunction of Commission filing system.* (1) In the event that the Commission's filing systems are not functioning and cannot receive service contract filings for twenty-four (24) continuous hours or more, affected

## Federal Maritime Commission

## § 530.10

parties will not be subject to the requirements of paragraph (a) of this section and § 530.14(a) that a service contract be filed before cargo is shipped under it.

(2) However, service contracts which go into effect before they are filed, pursuant to paragraph (e)(1) of this section, must be filed within twenty-four (24) hours of the Commission's filing systems' return to service.

(3) Failure to file a service contract that goes into effect before it is filed, pursuant to paragraph (e)(1) of this section, within twenty-four (24) hours of the Commission's filing systems' return to service will be considered a violation of Commission regulations.

[64 FR 11206, Mar. 8, 1999, as amended at 64 FR 23793, May 4, 1999; 64 FR 41042, July 29, 1999]

### § 530.9 Notices.

Within thirty (30) days of the occurrence of any event listed below, there shall be filed with the Commission, pursuant to the same procedures as those followed for the filing of an amendment pursuant to § 530.10 and appendix A to this part, a detailed notice of:

(a) Correction (clerical or administrative errors);

(b) Cancellation (as defined in § 530.10(a)(3));

(c) Adjustment of accounts, by re-rating, liquidated damages, or otherwise;

(d) Final settlement of any account adjusted as described in paragraph (c) of this section; and

(e) Any change to:

(1) The name of a basic contract party; or

(2) The list of affiliates under § 530.8(b)(9), including changes to legal names and business addresses, of any contract party entitled to receive or authorized to offer services under the contract.

### § 530.10 Amendment, correction, cancellation, and electronic transmission errors.

(a) *Terms.* When used in this section, the following terms will have these meanings:

(1) *Amendment* means any change to a service contract which has prospective

effect and which is mutually agreed upon by the service contract parties.

(2) *Correction* means any change to a service contract which has retroactive effect.

(3) *Cancellation* means an event which is unanticipated by the service contract, in liquidated damages or otherwise, and is due to the failure of the shipper party to tender minimum cargo as set forth in the contract, unless such tender was made impossible by an action of the carrier party.

(b) *Amendment.* Service contracts may be amended by mutual agreement of the parties to the contract. Amendments shall be filed electronically with the Commission in the manner set forth in § 530.8 and appendix A to this part.

(1) Where feasible, service contracts should be amended by amending only the affected specific term(s) or subterms.

(2) Each time any part of a service contract is amended, the filer shall assign a consecutive amendment number (up to three digits), beginning with the number "1."

(3) Each time any part of the service contract is amended, the "Filing Date" will be the date of filing of the amendment.

(c) *Corrections.* Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within forty-five (45) days of the contract's filing with the Commission, accompanied by remittance of a \$315 service fee, and shall include:

(1) A letter of transmittal explaining the purpose of the submission, and providing specific information to identify the initial or amended service contract to be corrected;

(2) A paper copy of the proposed correct terms. Corrections shall be indicated as follows:

(i) Matter being deleted shall be struck through; and

(ii) Matter to be added shall immediately follow the language being deleted and be underscored;

(3) An affidavit from the filing party attesting with specificity to the factual circumstances surrounding the clerical or administrative error, with reference to any supporting documentation;